

# BRAE CORPORATION

RECORDATION NO. 11879-R ✓  
Filed 1425

SEP 2 1988 - 11 25 AM

INTERSTATE COMMERCE COMMISSION

VIA HAND DELIVERY

August 31, 1988

RECORDATION NO. 11879-5 ✓  
Filed 1425

SEP 1 1988 - 11 25 AM

INTERSTATE COMMERCE COMMISSION

Ms. Agatha Mergenovich, Secretary  
Interstate Commerce Commission  
12th & Constitution  
Room 2215  
Washington, D.C. 20423

Dear Ms. Mergenovich:

Enclosed for filing and recordation pursuant to the provisions of 49 U.S.C Section 11303 are one original and four copies of the following document:

Sublease Agreement dated as of June 17, 1988 by BRAE Transportation, Inc. (lessor) and Texas, Oklahoma & Eastern Railroad Company (lessee) and Old Augusta Railroad Company (sublessor).

For purposes of this filing, Sublease Agreement relates only to those railcars, AAR Mechanical Designation XP, marked as follows:

OAR	3200	3264	3332	OAR	3226	3289	3356
	3203	3265	3333		3228	3291	3360
	3204	3266	3334		3231	3294	3363
	3206	3267	3336		3232	3297	3365
	3207	3268	3337		3234	3298	3366
	3211	3272	3338		3235	3299	3371
	3212	3273	3339		3236	3300	3372
	3214	3275	3340		3237	3302	3373
	3215	3276	3341		3239	3304	3374
	3216	3277	3342		3240	3305	3375
	3217	3279	3343		3241	3306	3376
	3218	3281	3344		3242	3307	3377
	3219	3282	3345		3243	3308	3380
	3220	3285	3346		3244	3309	3381
	3222	3286	3347		3246	3310	3382
	3223	3287	3350		3247	3311	3383
	3224	3288	3354		3249	3312	3385

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OAR	3250	3313	3387
	3252	3315	3388
	3254	3317	3390
	3255	3319	3391
	3256	3322	3394
	3257	3323	3395
	3258	3325	3397
	3259	3329	3398
	3261	3327	3399

Enclosed for filing and recordation pursuant to the provisions of 49 U.S.C Section 11303 are one original and four copies of the following document:  
The names and addresses of the parties to the transactions evidenced by the document described above are as follows:

**SECURED**

**PARTY:** The Connecticut Bank and Trust Company  
One Constitution Plaza  
Hartford, Connecticut 06115

**LESSOR:** BRAE Transportation, Inc.  
160 Spear Street, Suite 1600  
San Francisco, CA 94105

**LESSEE:** Texas, Oklahoma & Eastern Railroad Co.  
810 Whittington Ave.  
Hot Springs, Arkansas 71901

**SUB**  
**LESSEE:** Old Augusta Railroad Company  
Buck Creek Road  
New Augusta, Mississippi 39462

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Also, enclosed for filing and recordation pursuant to the provisions of 49 U.S.C Section 11303 are one original and four copies of the following document:

Equipment Schedule No. 4 dated as of July 22, 1988 between BRAE Transportation, Inc. and Burlington Northern Railroad Company

- 5

For purposes of this filing, the Equipment Schedule No. 4 relate only to those railcars, AAR Mechanical Designation, marked as follows:

BN 223307-223308  
223539-223540  
223200,223206  
223210,223215  
223219,223220  
223221,223225  
223226-223228  
223233,223239  
223242,223244  
223246,223252  
223254,223255  
223261,223268

The names and addresses of the parties to the transactions evidenced by the document described above are as follows:

**SECURED**

**PARTY:** The Connecticut Bank and Trust Company  
One Constitution Plaza  
Hartford, Connecticut 06115

**LESSOR:** BRAE Transportation, Inc.  
160 Spear Street, Suite 1600  
San Francisco, CA 94105

**LESSEE:** Burlington Northern Railroad Company  
9401 Indian Creek Parkway  
Overland Park, KS 66210

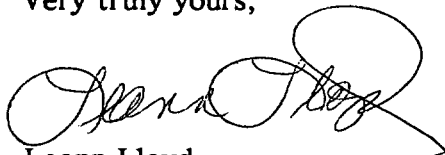
It is requested that these documents be filed and recorded under the names of the parties as set forth above. In view of the fact that they relate to the Equipment Trust Agreement dated as of May 1, 1980 between BRAE Transportation, Inc. and The Connecticut Bank and Trust Company, previously recorded and assigned recordation number 11879, we request that they be assigned the next available letter designations under that primary number.

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I also enclose a check in the amount of \$26.00 for the required recordation fee.

Please return: (1) your letter acknowledging the filing, (2) a receipt for the \$13.00 filing fee, (3) the enclosed copy of this letter and (4) the original and four copies of document (retaining one for your files) all stamped with your official recordation information.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Leann Lloyd", with a large, looping flourish at the end.

Leann Lloyd  
Assistant Vice President &  
Corporate Secretary

Enclosures

SUBLEASE AGREEMENT

RECORDATION NO. 71879-2 FILED 1482

COPY ✓

SUBLEASE AGREEMENT ("Agreement"), dated as of SEP 2 1988 11 25 AM June 17, 1988, between BRAE TRANSPORTATION, INC., 160 Spear Street, Suite 1600, San Francisco, California 94105 ("BTI"), as lessor, TEXAS, OKLAHOMA & EASTERN RAILROAD COMPANY, 810 Whittington Avenue, Hot Springs, Arkansas 71901 ("TOE"), as lessee and sublessor, and OLD AUGUSTA RAILROAD COMPANY, Buck Creek Road, New Augusta, Mississippi 39462 ("SUBLESSEE"), as sublessee (BTI, TOE and SUBLESSEE shall hereinafter be referred to as "the Parties").

1. RECITALS.

A. BTI and TOE have entered into a Lease Agreement dated as of June 2, 1980 (the "Lease"), pursuant to which TOE is leasing from BTI railcars as set forth in the Equipment Schedule to the Lease.

B. BTI and SUBLESSEE have entered into an Assignment Agreement dated July 31, 1984 ("Assignment"). BTI and SUBLESSEE desire to terminate such Assignment and upon the execution by the Parties of this Agreement, such Assignment shall be terminated and shall become null and void.

C. TOE agrees to sublease to SUBLESSEE, SUBLESSEE agrees to sublease from TOE, and BTI hereby consents to such sublease of, those certain "grandfathered" railroad freight cars as set forth in any sublease schedules executed by the Parties concurrently herewith or hereafter made a part of this Agreement. The word "Schedule" as used herein includes the Schedule or Schedules executed herewith and any additional Schedules and amendments thereto, each of which when signed by the Parties shall be a part of this Agreement. The scheduled items of equipment are hereinafter individually referred to as "Car" and collectively referred to as the "Cars."

D. It is the intent of the Parties to this Agreement that BTI shall at all times be and remain the lessor of the Cars, and that TOE shall remain the lessee and sublessor of the Cars. SUBLESSEE agrees that it will at no time take any action or file any document which is inconsistent with the foregoing intent and that, at no cost to SUBLESSEE, it will take such action and execute such documents as may be necessary to accomplish this intent.

E. In consideration of the premises and the mutual covenants contained herein, the Parties agree as follows:

2. TERM. This Agreement shall remain in full force until it shall have been terminated as to all of the Cars as provided herein. The sublease pursuant to this Agreement with respect to each Car shall commence upon the remarking of such Car to SUBLESSEE's railroad markings pursuant to the terms of this Agreement and shall continue until December 31, 1989, provided however, that if the Lease to which the Cars are subject shall terminate at any time, this Agreement shall also automatically terminate at such time.

3. DELIVERY. The Parties hereby acknowledge that the Cars have been delivered to and accepted by SUBLESSEE and that further deliveries of Cars to SUBLESSEE are not required pursuant to this Agreement. The Parties further acknowledge that certain of the Cars previously delivered to SUBLESSEE are not currently in SUBLESSEE's assigned control (the "Unavailable Cars"). BTI shall return such Unavailable Cars to SUBLESSEE as soon as practicable, as diversion permits. However, should SUBLESSEE desire an expedited return of the Cars to its tracks, BTI will arrange to have the Unavailable Cars revenue billed to SUBLESSEE and SUBLESSEE shall then be responsible for all transportation costs incurred by BTI to return such Unavailable Cars to SUBLESSEE.

#### **4. SUPPLY PROVISIONS.**

A. Hereinafter, "Interchange Rules" shall mean all codes rules, interpretations, laws or orders governing hire, service, use, condition, repair and all other matters pertaining to the interchange of freight traffic reasonably interpreted as being applicable to the Cars, adopted and in effect from time to time by the AAR and any other organization, association, agency or governmental authority, including the ICC and the United States Department of Transportation, which may from time to time be responsible for or have authority to impose such codes, rules, interpretations, laws or orders.

B. SUBLESSEE shall load, or order the loading of, all Cars on its tracks prior to loading, or ordering the loading of, (i) any substantially similar freight cars of other railroads interchanged onto SUBLESSEE's tracks; (ii) any substantially similar freight cars placed in assigned service on SUBLESSEE's tracks subsequent to the date hereof, or (iii) any substantially similar freight cars purchased or leased by SUBLESSEE subsequent to the date hereof; provided however, that this shall in no event prevent or prohibit SUBLESSEE from fulfilling its common carrier obligations to provide transportation and services upon reasonable request therefor to shippers on its railroad tracks. SUBLESSEE shall maintain sufficient records with respect to loadings and shipments to verify that it is priority loading the Cars as herein provided. SUBLESSEE shall, upon reasonable request by BTI, furnish to BTI its records with respect to loadings and shipments. In the event that BTI determines, based upon its review of the records, that SUBLESSEE is not complying with the intent of this priority loading provision, BTI may at its sole discretion terminate this Agreement as to all or any portion of the Cars covered by this Agreement upon seven (7) days notice.

#### **5. RAILROAD MARKINGS AND RECORD KEEPING.**

A. The Parties agree that the Cars will be lettered with the railroad markings of SUBLESSEE. SUBLESSEE shall be responsible for the expense of such marking, including the removal of any markings and/or logos associated with the former lessee of the Cars. The Parties further agree that any Car may also be marked, at BTI's expense, with the name of BTI and any other information required by an owner or secured party under a financing agreement entered into by BTI in connection with the acquisition of such Car. BTI shall be responsible for insuring that all such names and other information shall comply with all applicable regulations. Subject to the limitation set forth in Section 10, at the termination or expiration of the Agreement, the cost of the remarking of the Cars shall be borne by BTI.

B. Each Car leased hereunder shall be registered at BTI's expense in the Official Railway Equipment Register and the Universal Machine Language Equipment Register; provided however, that SUBLESSEE shall be responsible for any fee assessed by such publication for the listing or registration of SUBLESSEE itself, as distinguished from the registration of additional equipment to SUBLESSEE. BTI shall, at its sole cost and expense, and on behalf of SUBLESSEE, perform all record keeping functions in a manner consistent with this Agreement, such as those related to the use of the Cars by SUBLESSEE and other railroads in accordance with the AAR Interchange Rules and AAR Code of Car Service and Code of Car Hire Rules-Freight, including car hire reconciliation. Correspondence from railroads using such Cars shall be addressed to SUBLESSEE at BTI's address as set forth in the preamble to this Agreement. SUBLESSEE and BTI agree that BTI shall continue to provide such record keeping functions until such time as BTI gives SUBLESSEE written notice of discontinuance and SUBLESSEE approves such discontinuance.

C. All record keeping performed by BTI hereunder and a record of all payments, charges and correspondence related to the Cars shall be maintained by BTI in a form

suitable for reasonable inspection by SUBLESSEE from time to time during BTI's regular business hours. SUBLESSEE shall supply BTI with such reports, including daily telephone or electronic data transmission reports of the status of Cars on SUBLESSEE's tracks, home road interchange reports, and monthly reports of SUBLESSEE's loading activity, regarding the use of the Cars by SUBLESSEE on its railroad line and SUBLESSEE's obligations under this Agreement as BTI may reasonably request.

## **6. MAINTENANCE, TAXES AND INSURANCE.**

A. Except as otherwise provided herein, BTI will pay all costs, expenses, fees and charges incurred in connection with the use and operation of the Cars during the term of this Agreement, including but not limited to property and ad valorem taxes, repairs, maintenance and servicing, unless the same was occasioned by the negligence of SUBLESSEE. SUBLESSEE shall, pursuant to the AAR Interchange Rules, inspect all Cars interchanged to it to insure that such Cars are in the condition prescribed by the AAR Interchange Rules for cars received in interchange. SUBLESSEE shall also secure from interchanging lines any documentation prescribed by the AAR Interchange Rules for damaged Cars, inform BTI's Maintenance Department of such damage or reports of damage, and promptly mail any documentation to BTI. BTI will have full control of disposition of damaged Cars. SUBLESSEE shall be liable to BTI for any cleaning, servicing, or repairs required by the AAR Interchange Rules but not noted at the time of interchange. SUBLESSEE shall promptly report to BTI any damage or other condition of any Car which SUBLESSEE considers will make such Car unsuitable for use. Further, SUBLESSEE agrees that BTI will be responsible for designating the repair facility for any damaged Cars which are subject to defect cards issued by railroads, and for work classified as owner's responsibility, and that BTI shall have full control over the performance and acceptance of such repair work, and that should SUBLESSEE fail to comply with this provision, SUBLESSEE shall then be responsible for the payment of any and all unauthorized repairs performed and any repairs performed by undesignated repair facilities. In addition, BTI shall have the sole authority to specify the components to be used in the maintenance of the Cars.

B. Except as provided in Section 6A hereof, BTI, at its sole expense, shall make or cause to be made such inspections of, and maintenance and repairs to, the Cars as may be required. Upon request of BTI and at BTI's sole expense, SUBLESSEE, at its option, shall perform any necessary maintenance and repairs to Cars on SUBLESSEE's railroad tracks, as may be reasonably requested by BTI at rates negotiated between BTI and SUBLESSEE. BTI shall also make, at its expense, all alterations, modifications or replacement of parts as shall be necessary to maintain the Cars in good operating condition throughout the term of the sublease of such Cars. SUBLESSEE may make running repairs, in accordance with the AAR Interchange Rules and standards at rates for labor and material negotiated between BTI and SUBLESSEE, at BTI's expense, to facilitate continued immediate use of a Car, but shall not otherwise make any repairs, alterations, improvements or additions to the Cars without BTI's prior written consent. If SUBLESSEE makes an alteration, improvement, or addition to any Car without BTI's prior written consent, SUBLESSEE shall be liable to BTI for any revenues lost due to such alteration and any cost reasonably incurred by BTI to restore any Car to its condition prior to such SUBLESSEE change. Title to any such alteration, improvement or addition shall be and remain with BTI (or its assignee).

C. SUBLESSEE will, at all times while this Agreement is in effect, be responsible for the Cars while on SUBLESSEE's railroad tracks in the same manner that SUBLESSEE is responsible under the AAR Interchange Rules for freight cars not owned by SUBLESSEE

on SUBLESSEE's railroad tracks. SUBLESSEE shall protect against the consequences of an event of loss involving the Cars while on SUBLESSEE's railroad tracks by maintaining primary bodily injury and property damage liability insurance with minimum coverage of \$1,000,000 per occurrence on the Cars and SUBLESSEE shall also maintain insurance protecting against damage to the Cars with minimum coverage of \$60,000 per occurrence, or SUBLESSEE may self-insure against loss or damage to the Cars provided that its parent company, Leaf River Forest Products, Inc., shall at all times guarantee the performance of SUBLESSEE as concerns such self-insurance with regard to loss or damage to the Cars. If SUBLESSEE does not elect to self-insure, SUBLESSEE shall furnish to BTI concurrently with the execution hereof, and thereafter at intervals of not more than 12 calendar months, certificates of insurance evidencing bodily injury and property damage insurance and insurance protecting against damage to the Cars, signed by an independent insurance broker. All insurance shall be taken out in the name of "SUBLESSEE" and shall name BTI (or its assignee) as an additional insured.

D. BTI agrees to reimburse SUBLESSEE for all taxes paid by SUBLESSEE relating to each Car and on the lease, delivery or operation thereof which may remain unpaid as of the date of delivery of such Car to SUBLESSEE or which may be accrued, levied, assessed or imposed during the term of this Agreement, except taxes on income imposed on SUBLESSEE and sales or use taxes imposed on payments due SUBLESSEE under 7A(i) below. BTI and SUBLESSEE will comply with all state and local laws requiring the filing of and valorem tax returns on the Cars. SUBLESSEE will send to BTI, within five business days after receipt by SUBLESSEE from the taxing authorities, any notice of assessment of a tax which BTI is obligated to pay pursuant hereto. BTI shall review all applicable tax returns prior to filing.

## **7. LEASE RENTAL.**

A. BTI shall collect all car hire (time and/or mileage) payments made to SUBLESSEE by other railroad companies for their use of the Cars. SUBLESSEE will not grant or allow any reclaim, pay any empty mileage charges or permit any other reductions in car hire payments without BTI's prior written consent. BTI shall remit to SUBLESSEE all car hire payments received for Utilization of the Cars over 55% and 65 miles per day. All sums due SUBLESSEE hereunder from BTI shall be paid within 90 days of the end of the service month in which such sums are earned and collected. TOE hereby acknowledges that it shall have no right to any car hire payments earned by the Cars, and that BTI and/or SUBLESSEE shall be entitled to all such car hire payments as set forth herein.

B. In the event damage beyond repair or destruction of a Car has been reported in accordance with the AAR Interchange Rules and the appropriate amount due as a result thereof is received by BTI, the damaged or destroyed Car will be removed from the coverage of this Agreement as of the date that car hire earnings ceased. Any amounts received by SUBLESSEE as a result of such damage will be promptly paid over to BTI.

C. If at any time during a calendar month BTI determines that Utilization during the preceding calendar month was less than 50%, BTI may, at its option and upon not less than seven (7) days prior written notice to SUBLESSEE, terminate this Agreement as to such Cars as BTI shall determine; provided however, that failure to achieve 50% Utilization shall not provide grounds for withdrawing any Cars pursuant to this Section 7C, if during the seven day notice period, SUBLESSEE elects to pay to BTI the difference, if any, between the amount of revenue (time and mileage) which the Cars would have earned if their Utilization was equal to 55% and the Cars travelled an average of 65 miles



per day during such preceding calendar month, and the amount of revenue (time and mileage) which the Cars actually did earn during such preceding calendar month (the "Make-up Amount").

D. During the term of this Agreement, if any Car remains on SUBLESSEE's railroad tracks for more than seven (7) consecutive days, excluding service and repair time, BTI may, at its option and upon not less than twenty-four (24) hours prior written notice, terminate this Agreement as to such Car and withdraw such Car from SUBLESSEE's railroad tracks.

E. BTI shall have the absolute authority in its sole discretion to negotiate and enter into or refuse to enter into any bilateral agreement with any railroad with respect to storage charges, empty mileage charges, car hire rates covering the Cars or any other matter affecting the amount of revenue which the Cars are able to earn. If the ICC or any successor governmental agency, or any other regulatory body or any court shall at any time have in effect any order or take any other action, the effect of which would (1) cause the Cars to incur storage charges or empty mileage charges while on other railroads or (2) otherwise reduce the amount of revenue which the Cars are able to earn as of the date of the Agreement, BTI shall have the option to terminate this Agreement.

## **8. POSSESSION AND USE.**

A. So long as SUBLESSEE shall not be in default under this Agreement, SUBLESSEE shall be entitled to the possession, use and quiet enjoyment of the Cars in accordance with the terms of the Agreement and in the manner and to the extent Cars are customarily used in the railroad freight business, provided that SUBLESSEE will not require TOE or BTI to retain on SUBLESSEE's railroad tracks more Cars than are necessary to fulfill SUBLESSEE's reasonable requirements to provide transportation and facilities upon reasonable request therefore to shippers on its railroad tracks. However, SUBLESSEE's rights shall be subject and subordinate to the rights of any owner or secured party under any financing agreement entered into by BTI in connection with the acquisition of some or all of the Cars, i.e., upon notice to SUBLESSEE from any such secured party or owner that an event of default has occurred and is continuing under such financing agreement, such party may require that all rent shall be paid directly to such party and/or that Cars immediately be returned to such party. SUBLESSEE agrees that to the extent it has physical possession and can control use of the Cars, the Cars will at all times be used and operated under and in compliance with the laws of the jurisdiction in which the same may be located and in compliance with all lawful acts, rules and regulations, and orders of any governmental bodies or officers having power to regulate or supervise the use of such property, except that either BTI, TOE or SUBLESSEE may in good faith and by appropriate proceedings contest the application of any such rule, regulation or order in any reasonable manner at the expense of the contesting party or parties.

B. SUBLESSEE will not directly or indirectly create, incur, assume, or suffer to exist (except as provided in Section 8A) any mortgage, pledge, lien, charge, encumbrance, or other security interest or claim on or with respect to the Cars or any interest therein or in this Agreement or any Schedule hereto. SUBLESSEE will promptly, at its expense, take such action as may be necessary duly to discharge any such mortgage, pledge, lien, charge, encumbrance, security interest, or claim if the same shall arise at any time.

## **9. DEFAULT.**

A. The occurrence of any of the following events shall be an Event of Default by SUBLESSEE:

(i) The nonpayment by SUBLESSEE of any sum required herein to be paid by SUBLESSEE within ten (10) days after written notice of such default has been delivered to such SUBLESSEE.

(ii) The breach by SUBLESSEE of any other term, covenant, or condition of this Agreement, which is not cured within thirty (30) days or such other notice period as specified in this Agreement after written notice of such default has been delivered to SUBLESSEE.

(iii) Any act of insolvency or bankruptcy by SUBLESSEE, or the filing by SUBLESSEE of any petition or action under any bankruptcy, reorganization, insolvency or moratorium law, or any other law or laws for the relief of, or relating to, debtors.

(iv) The filing of any involuntary petition under any bankruptcy, reorganization, insolvency or moratorium law against SUBLESSEE that is not dismissed within sixty (60) days thereafter, or the appointment of any receiver or trustee to take possession of the properties of SUBLESSEE, unless such petition of appointment is set aside or withdrawn or ceases to be in effect within sixty (60) days from the date of filing or appointment.

(v) The subjection of any material portion of SUBLESSEE's property to any levy, seizure, assignment, application or sale for or by any creditor or governmental agency.

(vi) Any action by SUBLESSEE to discontinue rail service on all or a portion of its tracks or to abandon any of its rail properties pursuant to applicable provisions of the laws of the United States of America or any state.

(vii) A party shall be merged with or consolidated into another corporation which after such merger or consolidation shall have a net worth less than that of SUBLESSEE immediately prior thereto.

(viii) Any representation or warranty made by SUBLESSEE herein or any other document delivered to another party by SUBLESSEE related to this Sublease shall prove to have been false or incorrect in any material respect on the date when made and such breach or default shall continue for a period of thirty (30) days after written notice to SUBLESSEE of such default has been delivered.

B. Upon the occurrence of any Event of Default by SUBLESSEE, BTI may, at its option:

(i) Terminate this Agreement, proceed by any lawful means to recover damages for a breach hereof, and terminate SUBLESSEE's right of possession and use of the Cars, whereupon all rights and interest of SUBLESSEE in the Cars shall terminate and thereupon BTI may enter upon any premises where the Cars may be located and take possession of them and henceforth hold, possess and enjoy the same free from any right of SUBLESSEE, provided that BTI shall nevertheless have the right to recover from SUBLESSEE any and all rental amounts which under the terms of this Agreement may then be due or which may have accrued to the date on which BTI took such possession; or

(ii) Proceed by any lawful means to enforce performance by SUBLESSEE of this Agreement. SUBLESSEE agrees to bear the costs and expenses, including without limitation reasonable attorneys' fees, incurred by BTI in connection with the exercise of its remedies pursuant to this Section 9B.

C. The occurrence of any of the following events shall be an Event of Default by BTI and/or TOE:

(i) The nonpayment by BTI and/or TOE of any sum required herein to be paid by BTI and/or TOE within ten (10) days after written notice of such default has been delivered to BTI and/or TOE.

(ii) The breach by BTI and/or TOE of any other term, covenant, or condition of this Agreement, which is not cured within thirty (30) days or such other notice period as specified in this Agreement after written notice of such default has been delivered to BTI and/or TOE.

(iii) Any act of insolvency or bankruptcy by BTI and/or TOE, or the filing by BTI and/or TOE of any petition or action under any bankruptcy, reorganization, insolvency or moratorium law, or any other law or laws for the relief of, or relating to, debtors.

(iv) The filing of any involuntary petition under any bankruptcy, reorganization, insolvency or moratorium law against BTI and/or TOE that is not dismissed within sixty (60) days thereafter, or the appointment of any receiver or trustee to take possession of the properties of BTI and/or TOE, unless such petition of appointment is set aside or withdrawn or ceases to be in effect within sixty (60) days from the date of filing or appointment.

(v) The subjection of any material portion of BTI and/or TOE's property to any levy, seizure, assignment, application or sale for or by any creditor or governmental agency.

(vi) Any action by TOE to discontinue rail service on all or a portion of its tracks or to abandon any of its rail properties pursuant to applicable provisions of the laws of the United States of America or any state.

(vii) A party shall be merged with or consolidated into another corporation which after such merger or consolidation shall have a net worth less than that of BTI and/or TOE immediately prior thereto.

(viii) Any representation or warranty made by BTI and/or TOE herein or any other document delivered to another party by BTI and/or TOE related to this Sublease shall prove to have been false or incorrect in any material respect on the date when made and such breach or default shall continue for a period of thirty (30) days after written notice to BTI and/or TOE of such default has been delivered.

D. Upon the occurrence of any Event of Default by BTI, SUBLESSEE, may at its option:

(i) Terminate this Agreement, proceed by any lawful means to recover damages for a breach hereof, or

(ii) Proceed by any lawful means to enforce performance by BTI of this Agreement. BTI agrees to bear the costs and expenses, including without limitation reasonable attorneys' fees, incurred by SUBLESSEE in connection with the exercise of its remedies pursuant to this Section 9D.

E. Upon the occurrence of any Event of Default by TOE, SUBLESSEE, may at its option:

(i) Terminate this Agreement, proceed by any lawful means to recover damages for a breach hereof, or

(ii) Proceed by any lawful means to enforce performance by TOE of this Agreement. TOE agrees to bear the costs and expenses, including without limitation reasonable attorneys' fees, incurred by SUBLESSEE in connection with the exercise of its remedies pursuant to this Section 9E.

10. **TERMINATION.** At the expiration or earlier termination of this Agreement as to any Car, SUBLESSEE will surrender possession of such Car to BTI at any such reasonably convenient interchange point of SUBLESSEE as BTI shall designate at SUBLESSEE's sole expense, free of refuse and in good repair, condition and working order, ordinary wear and tear excepted. For any Car not returned in the condition required hereby, SUBLESSEE shall be liable to BTI for any and all cleaning, repair or servicing costs required to place such Car in such proper condition, including the cost to transport such Car to a repair facility as required. Provided, further, SUBLESSEE agrees not to load the Cars after expiration or earlier termination of this Agreement without BTI's prior written approval in accordance with Section 11 below. SUBLESSEE shall provide up to thirty (30) days free storage on its railroad tracks for BTI or the subsequent lessee of any terminated Car. If any Car is terminated pursuant Section 4B, 7D or 9B hereof, SUBLESSEE shall be liable to BTI for all costs and expenses incurred to place thereon the markings and name or other insignia of BTI's subsequent lessee, as well as for those costs and expenses incurred to move any such Car to BTI's subsequent lessee.

11. **RETURN OF CARS.** SUBLESSEE agrees that BTI shall have the sole right to determine whether or not the Cars may be loaded after expiration or earlier termination of the Agreement. BTI agrees to give such instructions to SUBLESSEE in writing within ten (10) days of such expiration or earlier termination. SUBLESSEE further agrees that upon the request of BTI, SUBLESSEE shall advise BTI as to whether or not the Cars can be loaded pursuant to this Section 11. In the event that any Car is loaded in violation of this Section 11, all of the obligations of SUBLESSEE under this Agreement with respect to such Car shall remain in full force and effect until such Car is redelivered to BTI; provided, however, that after the expiration or termination with respect to such Car, BTI shall be entitled to 100% of all time payments and 100% of all mileage payments earned by such Car, and, in addition, BTI shall be entitled to all car hire payments accrued by such Car while on SUBLESSEE's tracks as though such Car were carrying foreign railroad markings.

12. **REPRESENTATIONS, WARRANTIES AND COVENANTS.**

A. SUBLESSEE represents, warrants and covenants that:

(i) SUBLESSEE is a corporation duly organized, validly existing and in good standing under the laws of the state where it is incorporated, has all necessary corporate power and authority, permits and licenses to perform its obligations under this Agreement, and has permanent operating authority as common carrier by rail.

(ii) The entering into and performance of this Agreement will not violate any judgment, order, law or regulation applicable to SUBLESSEE, or result in any breach of, or constitute a default under or result in the creation of any lien, charge, security interest or other encumbrance upon any assets of SUBLESSEE or on the Cars pursuant to any instrument to which SUBLESSEE is a party or by which it or its assets may be bound.

(iii) There is no action or proceeding pending or threatened against SUBLESSEE before any court or administrative agency or other governmental body which might result in any material adverse effect on the business, properties and assets, or conditions, financial or otherwise, of SUBLESSEE.

(iv) There is no fact which SUBLESSEE has not disclosed to BTI in writing, nor is SUBLESSEE a party to any agreement or instrument nor subject to any charter or other corporate restriction which, so far as the SUBLESSEE can now reasonably foresee, will individually or in the aggregate materially adversely affect the ability of the SUBLESSEE to perform its obligations under this Agreement.

(v) There is no fact or other matter represented by the SUBLESSEE in written or other form and delivered to BTI which is false or incorrect in any material respect as of the date made.

B. TOE represents, warrants and covenants that:

(i) TOE is a corporation duly organized, validly existing and in good standing under the laws of the state where it is incorporated, has all necessary corporate power and authority, permits and licenses to perform its obligations under this Agreement.

(ii) The entering into and performance of this Agreement will not violate any judgment, order, law, or regulation applicable to TOE, or result in any breach of, or constitute a default under any instrument to which TOE is a party or by which it or its assets may be bound.

(iii) There is no action or proceeding pending or threatened against TOE before any court or administrative agency or other governmental body which might result in any material adverse effect on the business, properties and assets, or conditions, financial or otherwise, of TOE.

C. BTI represents, warrants and covenants that:

(i) BTI is a corporation duly organized, validly existing and in good standing under the laws of the state where it is incorporated, has all necessary corporate power and authority, permits and licenses to perform its obligations under this Agreement.

(ii) The entering into and performance of this Agreement will not violate any judgment, order, law, or regulation applicable to BTI, or result in any breach of, or constitute a default under any instrument to which BTI is a party or by which it or its assets may be bound.

(iii) There is no action or proceeding pending or threatened against BTI before any court or administrative agency or other governmental body which might result in any material adverse effect on the business, properties and assets, or conditions, financial or otherwise, of BTI.

13. **INSPECTION.** BTI shall at any time during normal business hours and upon reasonable notice have the right to enter the premises of SUBLESSEE where the Cars may be located for the purpose of inspecting and examining the Cars to insure SUBLESSEE's compliance with its obligations hereunder. SUBLESSEE agrees to use its best efforts to arrange for such inspections by BTI of any Cars which may be located on property not owned by SUBLESSEE. SUBLESSEE shall notify BTI within a reasonable time of any accident connected with the malfunctioning or operation of the Cars, including in such report the time, place and nature of the accident and the damage caused, the names and addresses of any persons injured and of witnesses and other information pertinent to SUBLESSEE's investigation of the accident. SUBLESSEE shall also notify BTI in writing within ten (10) days after any attachment, tax lien or other judicial process shall attach to any Car. SUBLESSEE shall furnish to BTI promptly upon its becoming available, a copy of its annual report submitted to the ICC and, when requested, copies of any other income or balance sheet statements submitted to the ICC.

14. **MISCELLANEOUS.**

A. This Agreement and the Schedules contemplated hereby shall be binding upon and shall inure to the benefit of the Parties hereto and their respective successors and assigns, except that TOE and SUBLESSEE may not, without the prior written consent of BTI, assign this Agreement or any of its rights hereunder or sublease the Cars to any

party, and any purported assignment or sublease in violation hereof shall be void. It is understood and agreed that BTI may assign this Agreement with respect to some or all of the Cars listed on any Schedule hereto to any trust of which BTI or one of its wholly-owned subsidiaries is a beneficiary, to any corporate joint venture of which BTI or one of its wholly-owned subsidiaries is a stockholder, or to any other owner of such Cars (each hereinafter a "Lease Assignee"), provided that BTI or one of its wholly-owned subsidiaries enters into a management agreement with such Lease Assignee with respect to the Cars. Upon delivery of a notice of assignment to SUBLESSEE, the term "BTI" as used herein shall mean such Lease Assignee, and BTI shall be relieved of all of its obligations and liabilities under this Agreement relating to such Cars. SUBLESSEE agrees to give its consent and to acknowledge, upon receipt of notice of assignment, such assignment of this Agreement by BTI. BTI warrants that any Lease Assignee of the Cars will subject such Cars to all the terms and conditions of this Lease.

SUBLESSEE also agrees to acknowledge, upon receipt, any security assignment of this Agreement by BTI, or by any Lease Assignee, to an owner or secured party under any financing agreement or sublease entered into by BTI or such Lease Assignee in connection with the acquisition of all or part of the Cars leased hereunder. SUBLESSEE hereby agrees that any such assignment may be with respect to all or part of the Cars on any Schedule hereto. Any assignment of this Agreement by BTI or any Lease Assignee to an owner or secured party shall not subject that owner or secured party to any of BTI's or such Lease Assignee's obligations hereunder. Those obligations shall remain enforceable by SUBLESSEE solely against BTI or such Lease Assignee, as the case may be.

B. The Parties agree to execute the documents contemplated by this transaction and such other documents as may be required in furtherance of any financing agreement entered into by BTI in connection with the acquisition of the Cars in order to confirm the financing party's interest in and to the Cars, this Agreement and Schedules hereto and to confirm the subordination provisions contained in Section 8 hereof and in furtherance of this Agreement. BTI is expressly authorized to insert the appropriate railcar reporting markings and Car description on the Schedule(s) at such time as notice is delivered to BTI by SUBLESSEE as to the correct reporting marks and physical description to be utilized.

C. It is expressly understood and agreed by the Parties hereto that this Agreement constitutes a sublease of the Cars only and no joint venture or partnership is being created. Notwithstanding the calculation of rental payments, nothing herein shall be construed as conveying to SUBLESSEE any right, title or interest in the Cars except as a sublessee only.

D. No failure or delay by BTI shall constitute a waiver or otherwise affect or impair any right, power or remedy available to BTI nor shall any waiver or indulgence by BTI or any partial or single exercise of any right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy.

E. This Agreement shall be governed by and construed according to the laws of the State of California.

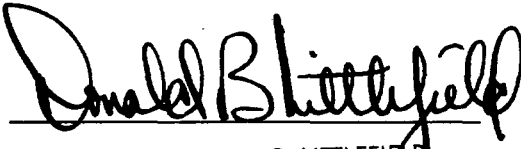
F. All notices hereunder shall be in writing and shall be deemed given when delivered personally or three days after deposit in the United States mail, postage prepaid, certified or registered, addressed to the president of the party or parties at the address set forth in the preamble to the Agreement.

**15. COUNTERPARTS.** This Agreement may be executed in one or more separate counterparts by the Parties hereto. Any counterparts executed by the Parties shall constitute a single agreement.

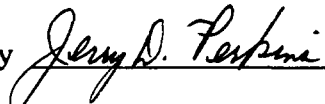
16. **FORCE MAJEURE.** A party hereto shall not be deemed to be in breach or in violation of this Agreement if it is prevented from performing any of its obligations hereunder for any reason beyond its reasonable control including, without limitation, acts of God, riots, fires, storms, public disturbances, or any regulation of any Federal, State or local government or any agency thereof.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date first above written.

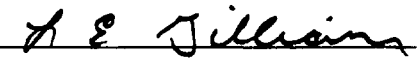
**BRAE TRANSPORTATION, INC.**

By   
Printed Name DONALD B. LITTLEFIELD  
Title PRESIDENT - RAIL DIVISION  
Date June 17, 1988

**OLD AUGUSTA RAILROAD COMPANY**

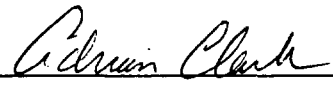
By   
Printed Name Jerry D. Perkins  
Title Vice President  
Date May 31, 1988

**TEXAS, OKLAHOMA & EASTERN RAILROAD COMPANY**

By   
Printed Name L E Gilliam  
Title VP & GEN MGR  
Date 6/9/88

The undersigned hereby acknowledges its obligations hereunder pursuant to Section 6C of this Agreement.

**LEAF RIVER FOREST PRODUCTS, INC.**

By   
Printed Name Adrian Clark  
Title Controller  
Date 5/31/88

# EQUIPMENT SCHEDULE NO. 1

TEXAS, OKLAHOMA & EASTERN RAILROAD COMPANY ("TOE") hereby subleases and BRAE TRANSPORTATION, INC. ("BTI") hereby consents to such sublease of, the following railcars to OLD AUGUSTA RAILROAD COMPANY ("SUBLESSEE"), pursuant to that certain Sublease Agreement dated as of June 17, 1988 (the "Agreement").

<u>Number of Cars</u>	<u>Description</u>	<u>Designation</u>	<u>Car Number(s)</u>
129	16' Double Plug Door, 100-ton, Plate C, 50'6" "Grandfathered" Boxcars	XP OAR	<del>3200</del> <sup>①</sup> 3264 3332 3203 3265 3333 <del>3204</del> 3266 3334 <del>3206</del> 3267 3336 <del>3207</del> 3268 3337 <del>3211</del> 3272 3338 <del>3212</del> 3273 3339 3214 3275 3340 3215 3276 3341 3216 3277 3342 3217 3279 3343 3218 3281 3344 3219 3282 3345 3220 3285 3346 3222 3286 3347 3223 3287 3350 3224 3288 3354 3226 3289 3356 3228 3291 3360 3231 3294 3363 3232 3297 3365 3234 3298 3366 3235 3299 3371 3236 3300 3372 3237 3302 3373 3239 3304 3374 3240 3305 3375 3241 3306 3376 3242 3307 3377 3243 3308 3380 3244 3309 3381 3246 3310 3382 3247 3311 3383 3249 3312 3385 3250 3313 3387 3252 3315 3388 3254 3317 3390 3255 3319 3391 <del>3256</del> 3322 3394 <del>3257</del> 3323 3395 3258 3325 3397 <del>3259</del> <del>3326</del> <sup>②</sup> 3398 3261 3327 3399
① 3202			
② 3329			



BTI, TOE and SUBLESSEE hereby incorporate by reference all of the terms, conditions and provisions of the Agreement in this Schedule.

IN WITNESS WHEREOF, the parties hereto have executed this Schedule as of the 17<sup>th</sup> day of June, 1988

**BRAE TRANSPORTATION, INC.**

By Donald B. Littlefield

Printed Name DONALD B. LITTLEFIELD

Title PRESIDENT - RAIL DIVISION

Date June 17, 1988

**OLD AUGUSTA RAILROAD COMPANY**

By Jerry D. Perkins

Printed Name Jerry D. Perkins

Title Vice President

Date May 31, 1988

**TEXAS, OKLAHOMA & EASTERN RAILROAD COMPANY**

By L E Gilliam

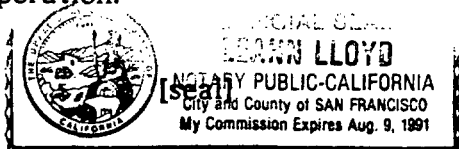
Printed Name L E Gilliam

Title VP & GEN MGR

Date 6/9/88

STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF SAN FRANCISCO )

On this 17<sup>th</sup> day of July, 1988, before me personally appeared DONALD B. LITTLEFIELD to me personally known, who being by me duly sworn says that such person is the PRESIDENT - RAIL DIVISION of BRAE Transportation, Inc., and that the foregoing Sublease Agreement, and Equipment Schedule No. 1 were signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instruments were the free acts and deeds of such corporation.



[Signature]  
Notary Public

My commission expires: 8/9/91

STATE OF Mississippi )  
 ) ss.  
COUNTY OF Lerry )

On this 31<sup>st</sup> day of May, 1988, before me personally appeared Ferry L. Perkins, to me personally known, who being by me duly sworn says that such person is the Vice President of Old Augusta Railroad Company and that the foregoing Sublease Agreement, and Equipment Schedule No. 1 were signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instruments were the free acts and deeds of such corporation.

[seal]

[Signature]  
Notary Public

My commission expires: My Commission Expires July 19, 1989

STATE OF Arkansas )  
 ) ss.  
COUNTY OF Sewier )

On this 14<sup>th</sup> day of June, 1988, before me personally appeared L. E. Williams, to me personally known, who being by me duly sworn says that such person is the V.P. and General Manager of Texas, Oklahoma & Eastern Railroad Company and that the foregoing Sublease Agreement, and Equipment Schedule No. 1 were signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instruments were the free acts and deeds of such corporation.

[seal]

[Signature]  
Notary Public

My commission expires: 1-31-95